

Senate Bill 334  
An Act Revising The Definition of "Stream" Within The Natural Streambed and Land  
Preservation Act of 1975  
Senator Brad Hamlett

Testimony of Jeffrey Tiberi, Executive Director  
Montana Association of Conservation Districts  
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I am here on behalf of the Montana Association of Conservation Districts. We would like to support a bill that provides a good working definition of a "natural, perennial flowing stream" under the 310 Law. Conservation Districts want a statutory definition so that across the state we are working from the same page. If this bill is passed out of committee, amendments consistent with the conservation districts' existing interpretations of the 310 Law should be included.

There are 58 conservation districts throughout Montana. Each is a political subdivision of the state and each is responsible for the administration of the Natural Streambed and Land Preservation Act of 1975 (known as the 310 Law) within its jurisdiction. Since 1975 the conservation districts have worked to provide consistent administration of the 310 Law while recognizing that the character and nature of streams differ from east to west and from district to district. Each district has now adopted what are called the Model 310 Rules. While the model rules are fairly consistent, each district has exercised the option to cover streams from mouth to source depending on the character of the streams in their jurisdiction. What is important to recognize is that the 310 Law itself has never contained a definition of a "natural, perennial-flowing stream."

At the MACD annual convention in November, 2012, the conservation districts passed a resolution, in part to address the lack of a statutory definition of a "natural, perennial-flowing stream." I have provided a copy of that resolution to your Committee. The resolution called for the 310 committee, consisting of conservation districts, other permitting agencies, regulated industry groups, and others to review and propose changes to the 310 law to make sure whatever changes proposed do not have unintended consequences and do not exceed conservation districts' ability to implement the change. This committee neither has had the chance to undertake its work under the resolution nor has it had the opportunity to review the bill or the proposed amendments.

Understanding that the 310 committee has not had the opportunity to weigh in on the bill, if Senate Bill 334 is to go forward, it provides a legislative opportunity to integrate the nearly 40 years of the "on the ground, everyday real world experiences of the conservation districts" in the administration of the 310 Law. The integration of the principals relied upon by the various

districts into the 310 Law will help in the administration of the law since potential applicants almost always look to the statutes for a definition of a “natural, perennial-flowing” stream. As such, the MACD is in support of a bill that provides a flexible definition that is in accord with current administration of the 310 Law within the various districts.

The MACD offers the following amendments, which have also been provided to the Committee:

- On page 1, lines 18 and 20 and on page 2, line 7, strike the term “flowing” from the definitions of an ephemeral stream and an intermittent stream. This is done because when such streams are referred to by the Districts in the administration of the 310 Law the term “flowing” is not used as a modifier. Rules would have to be amended and the nomenclature modified in 58 conservation districts.
- Also on page 1, line 20, strike the term “well-defined” because in nature an intermittent stream does not necessarily have a well-defined channel.
- On page 1, lines 20 and 21, with reference to the definition of intermittent stream, strike the remainder of the sentence after “water” on line 20 and insert new language “BUT NORMALLY IS DRY THROUGHOUT A SIGNIFICANT PORTION OF ITS LENGTH PART OF THE YEAR.” Because the 310 Law is designed to protect perennial-flowing streams, the definition of an “intermittent stream” need only be defined as having a channel and normally going dry throughout its length at some part of the year. It should not matter whether the stream goes dry in the spring, summer, fall, or winter nor should it matter that flow is supplemented by storm water runoff. The Supervisors who are implementing the 310 Law should be able to rely on their sensory perceptions to determine whether a stream is dry without reference to the character of water that flows in the channel during wet periods of the year. In relying on their sensory perceptions the supervisors must have the flexibility to decide what constitutes a significant portion of the length of a stream. A firm quantitative standard will not work in every district.
- On page 2, lines 2 through 6, the amendments to subsection (8) are proposed to provide a flexible definition that integrates the present ability of supervisors to tailor local rules to fit the nature and character of the streams in their jurisdiction. Two principal factors that conservation districts use in applying the 310 Law is that there be a natural or existing waterway and that it contain continuous natural flows. A third important factor is that the Supervisors have flexibility in determining the length of the stream to be covered if a portion of a stream goes dry anywhere from its source to its mouth. The final factor is a stream that is ephemeral or intermittent cannot fall within the definition of a stream for the purpose of applying the 310 Law. With the proposed amendments the definition would read: (8)(a) “STREAM” MEANS ANY NATURAL, PERENNIAL-FLOWING STREAM OR RIVER IN A WATERWAY IN ITS NATURAL OR EXISTING

CONDITION THAT CARRIES CONTINUOUS NATURAL FLOW IN A SIGNIFICANT PORTION OF ITS LENGTH ANYWHERE FROM ITS SOURCE TO ITS MOUTH. THE TERM INCLUDES THE STREAMBED, THE CHANNELS, AND THE IMMEDIATE BANKS. (b) THE TERM DOES NOT INCLUDE AN EPHEMERAL STREAM, AN INTERMITTENT STREAM, OR A STREAM OR RIVER THAT HAS BEEN DESIGNATED BY DISTRICT RULES AS NOT HAVING SIGNIFICANT AQUATIC AND RIPARIAN ATTRIBUTES IN NEED OF PROTECTION OR PRESERVATION UNDER 75-7-102.” This definition will centralize in the statutes the working definition the conservation districts have developed in each of their respective jurisdictions over nearly 40 years of administering the 310 Law. The conservation districts have developed rules detailing what constitutes a natural/existing waterway and what constitutes natural flow. The 310 Law is working and if a definition of “stream” is to be placed in the statutes it should be done so giving deference to the hard work done by the supervisors in developing a working definition through their rulemaking efforts and on the ground experiences in each of the districts.

The Montana Association of Conservation Districts respectfully request that its proposed amendments be adopted.